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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,500	12/02/2004	Juan Luis Hancke Orozco	Herbal Powers	4925
22925 7590 11/18/2009 PHARMACEUTICAL PATENT ATTORNEYS, LLC 55 MADISON AVENUE 4TH FLOOR MORRISTOWN, NJ 07960-7397			EXAMINER RAHMANI, NILOOFAR	
			ART UNIT 1625	PAPER NUMBER
			NOTIFICATION DATE 11/18/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Juan Luis Hancke Orozco, and Rafael Augustin Burgos Aguilera

Appeal 2009-015020
Application 10/516,500
Technology Center 1600

Decided: November 16, 2009

DECISION ON PETITIONS

This is a decision on two petitions filed on October 8, 2009, both entitled “Rule 41.3 Petition for Supervisory Intervention.” One petition (“First Petition”) requests that “the Board of [Patent] Appeals [and Interferences] strike the Examiner’s August 21, 2009 *Revised Second Supplemental Examiner’s Answer*.” First Petition, p. 1. (emphasis in original). The other petition (“Second Petition”) requests that “the Board of [Patent] Appeals [and Interferences] issue a corrected *Docketing Notice* because it will avoid confusion regarding what arguments are, and are not, before the Board.” Second Petition, p. 1. (emphasis in original).

FINDINGS

1. In this application, a Final Rejection was entered on January 19, 2007.

2. A Corrected Appeal Brief was filed on June 13, 2007, an Examiner's Answer was entered on August 29, 2007, and a Reply Brief was filed on September 4, 2007.
3. A Supplemental Examiner's Answer was entered on October 24, 2007, and a Supplemental Reply Brief was filed on November 8, 2007.
4. Another Supplemental Examiner's Answer was entered on December 3, 2007, and an Order Returning Undocketed Appeal to Examiner was entered on March 31, 2009 returning the application to the Examiner for correction of formal defects in the preceding Supplemental Examiner's Answer.
5. A still further Supplemental Examiner's Answer was entered on August 21, 2009, and an Appeal Docketing Notice was mailed on September 21, 2009. The First and Second Petitions followed on October 8, 2009.
- 6 In respect to appellant responses to supplemental examiner's answers, 37 C.F.R. § 41.43(b) provides that:

If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

DISCUSSION

As indicated by the chronology of papers filed by Appellants and papers entered by the Office outlined above, it is clear that the Docketing Notice of September 21, 2009 was entered one month after entry of the last-entered Supplemental Examiner's Answer of August 21, 2009. Thus, the Docketing Notice was entered before the two-month period for response to

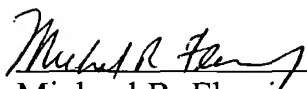
the Supplemental Examiner's Answer of August 21, 2009 had expired. The Docketing Notice, therefore, was entered prematurely. The Board should not have entered the Docketing Notice and taken jurisdiction of the Appeal until after the period for response to the Supplemental Examiner's Answer of August 21, 2009 had expired.

DECISION

Accordingly, the Docketing Notice of September 21, 2009 is rescinded and the Appeal is remanded to Technology Center 1600 for completion of the briefing or expiration of the period for completion of such briefing.

In view of the remand to the Technology Center, the First and Second Petitions addressed to the Board are dismissed as moot. Any objections or disagreements that Appellants may have with the Supplemental Examiner's Answer of August 21, 2009, should be addressed in a Supplemental Reply Brief and/or Petition to the Technology Center.

Appellants are given a period of two months from the mailing date of this Decision to respond to the Supplemental Examiner's Answer of August 21, 2009.



Michael R. Fleming
Chief Administrative Patent Judge

Appeal 2009-015020
Application 10/516,500

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